2026:AHC:230408-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1172 of 2026

Rohadash

…..Appellant(s)

Versus

State of U.P and 5 others

…..Respondent(s)

Counsel for Appellant(s)	:	Brij Raj
Counsel for Respondent(s)	:	Ramanand Pandey (A.C.S.C.)

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Brij Raj, learned counsel for the appellant and Shri Ramanand Pandey, learned Additional Chief Standing Counsel (A.C.S.C.) for all the respondents.

2. The present appeal raises a challenge to the order dated 22.09.2026, whereby learned Single Judge has disposed of Writ-C No. 37977 of 2025 filed by the appellant by observing that the petitioner has an alternative remedy to file an appeal and contents of paragraph-4 of the writ petition stating that there is no alternative remedy, are incorrect. For a ready reference, the order passed by the learned Single Judge is reproduced as under:-

> "1. Heard Sri Brij Raj, learned counsel for petitioner and Sri H.C. Dube, learned Additional Chief Standing Counsel for State-Respondents.
>
> 2. The Court does not find that it is case to be heard at first instance since petitioner has ample opportunity to raise all arguments even the proceedings are not conducted in accordance with procedure prescribed under Rule 27 read with Rules 258 and 259 of U.P. Panchayat Raj Rules, 1947 and in this regard the

> Court also takes note the contents of para 4 of writ petition that there is no alternative remedy, which is an incorrect declaration since admittedly petitioner has an alternative remedy to file appeal.
>
> 3. With aforesaid observation, this writ petition is disposed of."

3. The short question, therefore, involved in the present appeal is as to whether, against the order dated 31.08.2026 passed by the District Magistrate, Sambhal, which was assailed in the writ petition, any appeal is provided under the Statute.

4. The appellant was elected as Village Pradhan on 02.05.2021 and his term came to an end in May, 2026. Pursuant to an inquiry held in the year 2023-24, in relation to his working as Pradhan, his financial and administrative powers were ceased by an order dated 31.05.2024. The said order was, however, stayed on 23.10.2024 in Writ-C No. 20357 of 2024; consequently financial and administrative powers of the appellant were restored on 14.11.2024.

5. Since the interim order dated 23.10.2024 passed in in Writ-C No. 20357 of 2024 permitted continuance of final inquiry against the appellant, an order finally came to be passed by the District Magistrate on 31.08.2026, wherein, taking note of the Government Orders dated 29.05.2026 and 22.07.2026, the appellant, who, after expiry of his term as Pradhan, was given the charge of affairs of village Panchayat as Administrator, was removed from the post/charge of Administrator and Assistant Development Officer (Panchayat), Gunnaur was authorized to act as Administrator. The order dated 31.08.2026 also indicated that, as per Section 27 of the U.P. Panchayat Raj Act, 1947 ('the Act'), a sum of Rs. 3,42,041/- was to be recovered from three erring persons including the appellant.

6. The appellant challenged the order dated 31.08.2026 by filing writ petition giving rise to the present appeal and the learned Single Judge, taking note of Rule 27 (in fact Section 27) read with Rules 258 and 259 of U.P. Panchayat Raj Rules, 1947 ('the Rules'), declined to hear the

matter on merits and disposed of the writ petition by observing that the petitioner has an alternative remedy to file an appeal.

7. When the matter came up before this Court on 14.10.2026, following order was passed:-

> "1. It is submitted by counsel for the appellant that learned Single Judge was not justified in dismissing the writ petition on the ground of alternative remedy under Section 27(3) of the U.P. Panchayat Raj Act, 1947 ('Act, 1947') inasmuch as the challenge laid by the petitioner also pertains to the findings recorded during the course of enquiry under Section 95(1)(g) of the Act, 1947 and consequential removal of the appellant as Administrator.
>
> 2. Counsel for the parties pray for time to make submission on the said aspect of the matter.
>
> 3. Time prayed for is allowed.
>
> 4. List on 28.10.2026, as fresh."

8. Learned counsel for the parties have been heard at length in light of the statutory provisions.

9. Learned counsel for the appellant has made submissions that the order dated 31.08.2026, though indicated exercise of powers under Section 27 of the Act apart from exercise of powers under Section 95(1)(g) of the Act, levy of surcharge upon the appellant is *ex facie* without jurisdiction, inasmuch as the procedure prescribed for that purpose as envisaged under Rules 256 and 257 has not been followed.

10. Elaborating his submissions, it is contended by counsel that though surcharge can be levied upon an Ex-Pradhan on account of loss, waste or misapplication of money or property as a direct consequence of his neglect or misconduct while he was Pradhan, a well defined procedure to impose such levy is prescribed under Rule 256, wherein Chief Audit Officer of Co-operative Societies and Panchayats, on finding that such loss, waste or misuse of money or property has resulted as a direct consequence of the negligence or misconduct of a Pradhan, the Chief Audit Officer may call upon the Pradhan to explain in writing as to why the latter should not be required to pay the amount misused.

11. It is further submitted that though an appeal is provided under section 27(3) of the Act read with Rule 258 of the Rules against levy of

surcharge, the mere fact that, in the present case, levy was imposed in purported exercise of powers under Section 27, the remedy of appeal would not operate as a bar against entertainment of the challenge in writ jurisdiction, inasmuch as it is well settled that when an order is passed without jurisdiction, alternative remedy cannot be treated as an absolute bar.

12. Further submission has been made that since no appeal is provided against an order passed under Section 95(1)(g) of the Act, the order dated 31.08.2026 was rightly assailed through writ petition, however, learned Single Judge has not examined the nature of the order impugned before him and has treated the order as an order only under Section 27 of the Act, thereby wrongly relegating the appellant to avail remedy of appeal which, considering the nature of order dated 31.08.2026 and the pleas raised, does not lie and even if it lies against part of the order dated 31.08.2026, the same could not be treated as a bar against exercise of writ jurisdiction. In support of his submissions, learned counsel has relied upon judgment of this Court in **Dinesh Kumar and 4 others Vs. State of U.P. and 3 others: 2023 (1) ADJ 81 (DB)**.

13. On the other hand, learned A.C.S.C. has made submissions that Section 95(1)(g) of the Act has no application in the present case, inasmuch as the provision applies when action is taken against a Pradhan in charge, however, once, admittedly the term of the appellant as Village Pradhan had expired in May, 2026, the order passed by the District Magistrate in August, 2026 removing him from the post of Administrator, which post he occupied after cessation of his term and in furtherance of Government Order(s), would not attract applicability of Section 95(1)(g) and contrary submissions made on behalf of the appellant are not acceptable.

14. As regards Section 27 of the Act, submission has been made that since Section 27 (3) does provide an appeal before the State Government or such an appellate authority as may be prescribed, against the order passed under Section 27, dismissal of writ petition on the ground of

availability of remedy of appeal, does not call for any interference and whatever grounds the appellant is raising to challenge sustainability of the order passed under Section 27 taking aid of Rules, he may take the same before the appellate forum. He, thus, prays for dismissal of the special appeal.

15. We have considered the submissions made and have perused the material available on record.

16. In order to examine the legislative intent in relation to exercise of powers under Section 95 and/or Section 27 of the Act, Rules 256, 257 and 258, we deem it appropriate to reproduce the relevant portions of the provisions which are extracted as under:-

> **Section 95-**
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> **"95. Inspection.- (1) The State Government may-**
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> …….
>
> **(g) Remove a Pradhan, or member of a Gram Panchayat or a Joint Committee or Bhumi Prabandhak Samiti,**
>
> ……...
>
> Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pradhan is *prima facie* found to have committed financial and other irregularities such Pradhan shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a Committee consisting of three members of Gram Panchayat appointed by the State Government.
>
> ……..
>
> **Provided that**
>
> (i) no action shall be taken under Clause (f), Clause (g) except after giving to the body or person concerned a reasonable opportunity of showing cause against the action proposed;
>
> **(2) A person removed under sub-clauses (iii) and (iv) of clause (g) of sub-section (1) of this section shall not be entitled to be re-elected or re-appointed to any office under this Act for a period of five years or such lesser period as the State Government may order in any case.**
>
> **(3) No order made by the State Government under this section shall be called in question in any Court.**
>
> ……"
>
> **Section 27**
>
> **27. Surcharge. - (1) Every Pradhan of a Gram Panchayat, every member of a Gram Panchayat or of a Joint Committee**

or any other committee constituted under this Act shall be liable to surcharge for the loss, waste or misapplication of money or property belonging to the Gram Panchayat, if such loss, waste or misapplication is direct consequence of his neglect or misconduct while he was such Pradhan or Member

Provided that such liability shall cease to exist after the expiration of ten years from the occurrence of such loss, waste or misapplication, or five years from the date on which the person liable ceases to hold his office, whichever is later.

(2) The prescribed authority shall fix the amount of the surcharge according to the procedure that may be prescribed and shall certify the amount to the Collector who shall, on being satisfied that the amount is due, realise it as if it were an arrear of land revenue.

(3) Any person aggrieved by the order of the prescribed authority fixing the amount of surcharge may, within thirty days of such order, appeal against the order of the State Government or such other appellate authority as may be prescribed.

(4) Where no proceeding for fixation and realization of surcharge as specified in sub-section (2) is taken the State Government may institute suit for compensation for such loss, waste or misapplication, against the person liable for the same."

CHAPTER XIII

SURCHARGE RULES

"256. (1) **In any case where the Chief Audit Officer, Co-operative Societies and Panchayats, considers** that there has been a loss, waste or misuse of any money or other property belonging to a Gaon Sabha as a direct consequence of the negligence or misconduct of a Pradhan, **he may call upon** the Pradhan, Up-Pradhan, Member, Officer or servant, as the case may be, to explain in writing why such Pradhan, Up-Pradhan, Member, officer, or servant should not be required to pay the amount misused or the amount which represents the loss or waste caused to the Gaon Sabha or to its property and such explanation shall be furnished within a period not exceeding two months from the date such requisition is communicated to the person concerned.

Provided that an explanation from the Pradhan, Up-Pradhan or member of the Gaon Panchayat shall be called for through the District Magistrate and from the officer or servant through the Panchayat Raj Officer:

Provided also that no explanation shall be called for from any member who is recorded in the minutes of the Gaon Panchayats or any of its committee as having been absent from the meeting at which the expenditure objected to was sanctioned or who voted against such expenditure.

Note. - Any information required by the Chief Audit Officer, Co-operative Societies and Panchayats or any officer subordinate to him not below the rank of auditor, Panchayats for preliminary enquiry, shall be furnished and shall be

connected papers and records shall be shown to him by the Pradhan immediately on demand.

(2) Without prejudice to the generality or the provisions contained in sub-rule (1) the Chief Audit Officer, Co-operative Societies and Panchayats, may call for the explanation in the following cases:

(a) where expenditure has been incurred in contravention of the provisions of the Act or of the rules or regulations made thereunder;

(b) where loss has been caused to the Gaon Sabha by acceptance of a higher tender without sufficient reasons in writing;

(c) where any sum due to the Gaon Sabha has been remitted in contravention of the provisions of the Act or the rules or regulations made thereunder;

(d) where the loss has been caused to the Gaon Sabha by neglect in realising its dues; or

(e) where loss has been caused to the funds or other property of the Gaon Sabha on account of want of reasonable care for the custody of such money or property.

(3) On the written request of the Pradhan, Up-Pradhan, Member, Officer or servant from whom an explanation has been called for, the Gaon Panchayat shall give his necessary facilities for inspection of the records connected with the requisition for surcharge. The Chief Audit Officer may, on application from the person surcharged allow a reasonable extension of time for submission of his explanation if he is satisfied that the person charged has been unable, for reasons, beyond his control, to consult the record for the purpose of furnishing his explanation.

Explanation. - Making of an appointment in contravention of the Act, the rules or the regulations, made thereunder shall amount to misconduct or negligence and payments to employees of salaries and other dues on account of such irregular appointments shall be deemed to be a loss, waste or misuse of Gaon Fund.

257. (1) After the expiry of the period prescribed in sub-rule (1) or (3) of Rule 256, as the case may be, and after examining the explanation, if any, received within time, the Chief Audit Officer shall submit the papers along with his recommendations to the District Magistrate of the district in which the Gaon Sabha is situated in case of Pradhan, Up-Pradhan and Members and to the District Panchayat Raj Officer of the district in which the Gaon Sabha is situated in case of officers and servants.

(2) The District Magistrate or the District Panchayat Raj Officer as the case may be, after examining and after considering the explanation, if any, shall require the Pradhan, Up-Pradhan, Member, Officer or servant of the Gaon Panchayat to pay the whole or part of the sum to which such Pradhan, Up-Pradhan, Member, Officer or servant is found liable:

Provided, firstly, that no Pradhan, Up-Pradhan, Member, Officer or servant of a Gaon Panchayat would be required to make good the loss, if from the explanation of the Pradhan, Up-Pradhan, Member, Officer or servant concerned or otherwise the District

> Magistrate of the District Panchayat Raj Officer, as the case may be, is satisfied that the loss was caused by an act of the Pradhan, Up-Pradhan, Member, Officer or servant in the bona fide discharge of his duties.
>
> Provided, secondly, that in case of loss, waste or misuse occurring as a result of a resolution of the Gaon Panchayat or any of its committees the amount of loss to be recovered shall be divided equally among all the members including Pradhan and Up-Pradhan, who are reported in the minutes of the Gaon Panchayat or any of its committee as having voted for or who remained neutral in respect of such resolution:
>
> Provided, thirdly, that no Pradhan, Up-Pradhan, Member, Officer or servant shall be liable for any loss, waste or misuse after the expiry of four years from the occurrence of such loss, waste or misuse or after the expiry of three years from the date of his ceasing to be a Pradhan, Up-Pradhan, Member, Officer or servant of the Gaon Panchayat whichever is later.
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> **258.** (1) Any Pradhan, Up-Pradhan or Member of a Gram Panchayat aggrieved with an order of surcharge passed by the District Magistrate under Rule 256 **may appeal** to the Commissioner of the Division within thirty days from the date on which such order is communicated to him and the Commissioner of the Division may confirm, rescind or vary the order passed by the District Magistrate or may pass such orders as he thinks fit.
>
> (2) Any Officer or servant of a Gram Panchayat aggrieved with an order of surcharge passed by the District Panchayat Raj Officer may appeal to the District Magistrate within thirty days from the date on which such order is communicated to him and the District Magistrate may confirm, rescind or vary the order passed by the District Panchayat Raj Officer or may pass such orders as he thinks fit."

17. A bare perusal of Section 95 of the Act indicates that the power under the said provision is exercised by the State Government, which power has been delegated upon the District Magistrate of the district concerned and the person who is removed from the post of Pradhan, is not entitled to be re-elected or re-appointed to any office under the Act for a period of five years or such lesser period as the State Government may order in any case. Sub-section (3) of Section 95 clearly puts a bar against the challenge to the order before any court which bar, however, is not attracted against the High Court, that is to say that challenge to an order passed under Section 95(1)(g) can certainly be laid under Article 226 of the Constitution of India.

18. In the present case, though the term of the appellant as Pradhan ended in May, 2026, it is not in dispute that, in terms of the applicable Government Order, he was given the charge of Administrator, however,

by order dated 31.08.2026, in light of subsequent Government Orders, he was removed from the post of Administrator. The mere fact that on the day when the order dated 31.08.2026 was passed by the District Magistrate, the appellant was not working as Pradhan but as Administrator, would not alter the very nature of the order passed by the District Magistrate at least to the extent that it would be deemed to have been passed in exercise of powers under Section 95(1)(g) only.

19. In the present case, the proceedings against the appellant were initiated under Section 95(1)(g) in the year 2023 when he was working as Village Pradhan and the fact that he completed his tenure in May, 2026, his removal from the charge/post of Administrator was as a consequence of allegations levelled against him and the findings recorded in inquiry report relied upon by the District Magistrate in the order dated 31.08.2026.

20. For the aforesaid reasons, on account of non-availability of remedy of appeal against the order passed under Section 95(1)(g), dismissal of writ petition on this ground cannot be sustained and the writ petition is held to be maintainable.

21. Now, coming to the indications made in the order dated 31.08.2026 as if the same was passed also in exercise of powers under Section 27 of the Act, we find substance in the submissions made on behalf of the appellant that in order to exercise powers under Section 27, procedure provided under Rules 256 and 257 has to be followed. In the present case, the order dated 31.08.2026 does not *prima facie* reflect that the procedure prescribed under the said Rules was followed as we do not find indication of any action taken by the Chief Audit Officer as per Rule 256 and, it *prima facie* appears that, the material which was utilized by the District Magistrate for removing the appellant from the post of Administrator, the same material was utilized for the purposes of imposing surcharge upon him to the extent of Rs. 1,13,680/-. However, no final opinion in this regard can be formed by us as the matter has not been heard by the writ court on merits.

22. The judgment cited on behalf of the appellant in the case of **Dinesh Kumar** (supra) comprehensively deals with the exercise of powers under Section 27 read with Rules 256 and 257, wherein the role of Chief Audit Officer or his delegatee the District Audit Officer, was extensively dealt with by this Court and having found the action impugned in that petition as contrary to the Rules, the same was set aside.

23. In view of the above discussion, the challenge laid to the purported exercise of powers under Section 27 through writ petition in which comprehensive grounds were taken with reference to the provisions of Section 27 read with applicable Rules 256 and 257 raising the pleas of want of jurisdiction and procedural error, is found to be maintainable despite remedy of appeal provided under sub-section (3) of Section 27 and cursory dismissal of writ petition on the ground of alleged availability of alternative remedy of appeal as per Section 27 read with Rules 258 and 259, is found to be not sustainable.

24. The appeal is, accordingly, **allowed**.

25. The order dated 22.09.2026 passed by learned Single Judge in Writ-C No. 37977 of 2025 is **set aside**.

26. Writ-C No. 37977 of 2025 is **restored** to its original number and status and the same shall be listed before the appropriate Bench **on 18.11.2026, as fresh**.

27. It is made clear that we have not expressed any opinion on merits *qua* the order dated 31.08.2026 impugned in the writ petition and our order is confined only to maintainability of the writ petition. Therefore, all contentions of the parties on merits shall remain open to be raised before the writ court.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

November 04, 2026
AKShukla/-

Digitally signed by :-
ANIL KUMAR SHUKLA
High Court of Judicature at Allahabad